

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

HEYMANN MERCANTILE CO., INC.

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU -3393

Decision No. CU 4228

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by HEYMANN MERCANTILE CO., INC. in the amended amount of \$2,294.72 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that claimant was organized in New York and that at all pertinent times 100% of the outstanding capital stock of the claimant has been owned by Gillespie & Company of New York, Inc., also organized in New York. This officer also certified that 57.3877% of the beneficial ownership of Gillespie & Company of New York, Inc. is in United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copy of claimant's invoice No. E-15416 of May 20, 1960 reflecting the sale to Solis, Entrialgo & Co. of Havana, Cuba, of goods totalling \$651.49, as to which freight, shipping and other attendant fees increased the total to \$695.03; and copy of Michael Vasti's invoice No. 277 of October 30, 1959 reflecting the sale to Almacenes de Tejidos Universal, S.A. of goods totalling \$1,573.33 and as to which freight, shipping and other fees increased the total to \$1,599.69. The record also discloses that the latter account was assigned to claimant by Michael Vasti prior to July 18, 1960. (See Claim of Michael Vasti, Claim No. CU-2145, 1967 FCSC Ann. Rep. 62.)

Additionally, the record includes a letter of July 18, 1960 from the Havana branch of The First National Bank of Boston, to claimant, in which it is stated that the collection of \$1,599.69 was paid by the consignee (Almacenes de Tejidos Universal, S.A.) and that the collecting bank was still awaiting a dollar reimbursement release from the Monetary Stabilization Fund, a Cuban Government agency; and another letter dated November 22, 1960 from The Trust Company of Cuba, to claimant's bank, indicating that

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the collection of \$695.03 was paid by the consignee (Solis, Entrialgo & Cia.), and that the Bank was awaiting similar authorization from the Exchange Authorities. Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on November 23, 1960 as to \$695.03, and on July 19, 1960 as to \$1,599.69, the days after the collections were acknowledged by the two Cuban collecting banks.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
July 19, 1960	\$1,599.69
November 23, 1960	<u>695.03</u>
	\$2,294.72

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CERTIFICATION OF LOSS

The Commission certifies that HEYMANN MERCANTILE CO., INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Thousand Two Hundred Ninety-four Dollars and Seventy-two Cents (\$2,294.72) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

NOV 26 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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